

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

EMMITT GRIER, JR.,)	
)	
Plaintiff,)	
)	Civil Action No. 05-005
V.)	
)	Judge Sean J. McLaughlin
SUPERINTENDENT EDWARD J.)	Mag. Judge Susan Paradise Baxter
KLEM; ERIE COUNTY DISTRICT)	
ATTORNEY; COMMONWEALTH OF)	
PENNSYLVANIA; OFFICE OF)	
THE PROTHONOTARY,)	
)	
Defendants.)	Electronically Filed

MOTION TO DISMISS FILED ON BEHALF OF DEFENDANT KLEM

AND NOW, comes defendant, Edward J. Klem, by his attorneys, Thomas W. Corbett, Jr., Attorney General, Mary L. Friedline, Senior Deputy Attorney General, and Susan J. Forney, Chief Deputy Attorney General, Chief Litigation Section, and respectfully moves to dismiss the instant complaint pursuant to Fed.R.Civ.P. 12(b)(6) for the following reasons:

1. Plaintiff, Emmitt Grier, Jr., is a *pro se* prisoner currently in the custody of the Pennsylvania Department of Corrections at SCI-Mahanoy.
2. Grier alleges a violation of his due process rights under the Fourteenth Amendment to the United States Constitution arising out of his inability to obtain and use laboratory testing of DNA evidence at his criminal trial.
3. Grier's complaint sounds in habeas corpus and does not state a cognizable claim under § 1983.

4. Further, Grier fails to allege any personal involvement on the part of Superintendent Klem, who was named as a party due to his “jurisdictional authority as custody and care taker of the plaintiff while housed at the SCI-Mahanoy prison facility.” (Complaint, Section IV.C, ¶ 12).

WHEREFORE, it is respectfully requested that the instant Complaint be dismissed as to Superintendent Klem.

Respectfully submitted,

Thomas W. Corbett, Jr.
Attorney General

BY: /s/ Mary Lynch Friedline
MARY LYNCH FRIEDLINE
Senior Deputy Attorney General
PA I.D. No. 47046

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief Litigation Section

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Date: October 4, 2005

CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2005, I electronically filed the foregoing *Motion to Dismiss* with the Clerk of Court using the CM/ECF system. And I hereby certify that I have mailed the foregoing document by United States Postal Service to the following non CM/ECF participants:

EMMITT GRIER, JR, EJ 7879
SCI Mahanoy
301 Morea Road
Frackville, PA 17932

By: /s/ Mary Lynch Friedline
MARY LYNCH FRIEDLINE
Senior Deputy Attorney General